IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1976

No. 76-60

DOLPH BRISCOE,
Governor of the State of Texas, *et al.*,
Petitioners,

v.

GRIFFIN B. BELL,
Attorney General of the United States, *et al.*,
Respondents.

ON WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF OF THE
MEXICAN AMERICAN LEGAL DEFENSE AND EDUCATIONAL FUND, INC., NAACP LEGAL DEFENSE AND EDUCATIONAL FUND, INC., LEADERSHIP CONFERENCE ON CIVIL RIGHTS, AND LAWYERS' COMMITTEE FOR CIVIL RIGHTS UNDER LAW, *AMICI CURIAE* IN SUPPORT OF THE DECISION BELOW

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February 25, 1977

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INTEREST OF AMICI CURIAE

The Mexican American Legal Defense and Educational Fund (MALDEF) is a nonprofit corporation dedicated to ensuring that the civil rights of Mexican Americans are properly protected. With offices throughout the Southwest, in California, and in Washington, D.C., MALDEF provides legal assistance to safeguard the Mexican American community's educational, political and voting rights.

Protecting the voting rights of Mexican Americans has long been one of MALDEF's key concerns. It has represented Mexican American voters throughout the South-

west, and provided technical assistance to the Congressional committees which held hearings on the Voting Rights Act Amendments of 1975. The voting rights of Mexican American citizens in Texas have been of particular concern to MALDEF. It has devoted substantial resources to monitor and implement the 1975 Amendments, and through its office in San Antonio has brought many cases under the Act and filed other actions challenging discriminatory voting practices and procedures on behalf of Mexican American voters in Texas. However, MALDEF does not have sufficient resources to challenge all such practices. Thus, continued enforcement of the Voting Rights Act Amendments of 1975, which are here challenged by the State of Texas, is essential if the voting rights of the State's minority citizens are to be fully protected.

The NAACP Legal Defense and Educational Fund, Inc., is a nonprofit corporation incorporated under the laws of the State of New York. It was founded to assist Negroes to secure their constitutional rights by the prosecution of lawsuits. Its charter declares that its purposes include rendering legal services gratuitously to Negroes suffering injustice by reason of racial discrimination. For many years attorneys of the Legal Defense Fund have represented minorities before this Court and the lower courts in litigation to secure their constitutionally protected right to vote. *East Carroll Parish School Board v. Marshall,* 424 U.S. 636 (1976); *National Association for the Advancement of Colored People v. New York,* 413 U.S. 345 (1973); *Smith v. Allright,* 321 U.S. 649 (1944).

The Leadership Conference on Civil Rights comprises 137 civil rights, fraternal, religious, labor, and civic organizations, as well as organizations for the rights of women and the handicapped. In its strive for civil rights the Leadership Conference has been especially concerned with the right to vote and has worked for the enactment of the Voting Rights Act of 1965, its successors and extensions, and for the full implementation and enforcement of these laws in the interest of the right to vote for all Americans.

The Lawyers' Committee for Civil Rights under Law is a nonprofit corporation organized in 1963 at the request of the President of the United States; its Board of Trustees includes thirteen past presidents of the American Bar Association, three former Attorneys General, and two former Solicitors General of the United States. The Committee's primary mission is to involve private lawyers throughout the country in the quest of all citizens to secure their civil rights through the legal process. Among its activities has been the provision of counsel in voting rights cases throughout the South; in this regard, the Committee has been particularly concerned with enforcement of the Voting Rights Act.

The written consent of the parties, pursuant to Rule 42(2) of the Supreme Court of the United States, is filed herewith.

STATEMENT OF THE CASE

The Voting Rights Act of 1965, 42 U.S.C. §1973 *et seq.*, (hereinafter the "1965 Act"), has been hailed as the most effective civil rights legislation ever passed.[1] Since its enactment, the number of blacks registered to vote in the seven southern states covered by the Act has nearly doubled, and the number of black elected officials has increased almost tenfold.[2] The Chairman of the United

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[1] H.R. Rep. No. 94-196, 94th Cong., 1st Sess. (1975) at 4 [hereinafter "H.R. Rep. 94-196"].

[2] Senate Hearings Before the S. Subcomm. on Constitutional Rights, Extension of the Voting Rights Act of 1965, 94th Cong., 1st Sess. (1975) at 121, [hereinafter "1975 Senate Hearings"]. *See also* United States Commission on Civil Rights, *The Voting Rights Act: Ten Years After* (1975) at 40-52 [hereinafter "*Ten Years After*"].

States Civil Rights Commission has underscored the importance of the 1965 Act:

> The Voting Rights Act, as a symbol of national commitment and as a set of enforcement mechanisms, has contributed greatly to the changing political circumstances of minorities in the covered jurisdictions. Where earlier legislation proved ineffective, the Voting Rights Act has made the 15th amendment a living, forceful entity in many areas. Vigorously enforced, the act can ensure that minority citizens will not be deprived of their right to participate in their own government.[3]

The 1965 Act, however, proved deficient in one major respect: it provided no protection to Mexican Americans and other language minorities subjected to the same forms of voting discrimination suffered by southern blacks. Like blacks, Mexican Americans have long been excluded from the electoral process. In *White v. Regester*, 412 U.S. 755, 768 (1973), this Court affirmed the district court's findings that:

> "[A] cultural incompatibility ... conjoined with the poll tax and the most restrictive voter registration procedures in the nation have operated to effectively deny Mexican-Americans access to the political processes in Texas even longer than blacks were formerly denied access by the white primary."

English-only elections, intimidation, discriminatory enforcement of electoral laws, gerrymandering, multimember districting, and widespread use of at-large elections also have denied Mexican Americans equal access to the electoral process.[4] In 1974 the disparity between Mexican American and white registration in some areas of

[3] Hearings Before the Subcommittee on Civil and Constitutional Rights of the Committee on the Judiciary, House of Representatives, 94th Cong., 1st Sess. (1975) at 29 [hereinafter "1975 House Hearings"].

[4] *See* discussion, *infra*, at 28-42. *See also* H.R. Rep. 94-196 at 16-23.

Texas was estimated at 10-15 percent,[5] and Mexican Americans held only 2.5 percent of the State's elected offices even though they comprise approximately 18 percent of its population.[6] Blacks in Texas, who comprise approximately 12 percent of the State's population, have suffered similar treatment, with similar results.[7] In 1974, blacks held only .5 percent of the elected offices in Texas.[8]

In January 1975 the United States Commission on Civil Rights recommended that Congress expand the 1965 Act to protect the voting rights of language minority citizens.[9] Following the Commission's recommendation, Congress held hearings to examine the evidence of voting discrimination against language minorities. The voluminous hearing record documented a pattern of voting discrimination against Mexican Americans throughout the Southwest similar to that which led to enactment of the 1965 Act.[10]

Confronted with such evidence, Congress voted overwhelmingly[11] to enact the Voting Rights Act Amendments of 1975, Pub. L. No. 94-73, 42 U.S.C.A. § 1973 *et*

[5] 1975 House Hearings at 807-09.

[6] *Id.* at 276.

[7] 1975 House Hearings at 276, 360-61, 367-69. *See also White v. Regester, supra.* There are more blacks living in Texas than in any of the southern states covered by the 1965 Act. Texas has almost 1.5 million minority residents over the age of 25, or three times the number of minorities in the largest of the southern covered jurisdictions. 1975 House Hearings at 360.

[8] 1975 House Hearings at 248, 276.

[9] *Ten Years After*, at 355a.

[10] *See generally* H.R. Rep. 94-196 at 16-23. *See also* 1975 Senate Hearings at 96-97, 1975 House Hearings at 399-405.

[11] The House vote was 341 yeas, 70 nays; the Senate vote 77 yeas, 12 nays.

seq. (1976 Supp.) (hereinafter the "1975 Amendments"). Congress found that ". . . voting discrimination against citizens of language minorities is pervasive and national in scope," that "through the use of various practices and procedures, citizens of language minorities have been effectively excluded from participation in the electoral process," and that "in many areas of the country, this exclusion is aggravated by acts of physical, economic and political intimidation." 42 U.S.C.A. §§ 1973b(f)(1), 1973aa-1a(a) (1976 Supp.).

In September, 1975, the Attorney General and the Director of the Census determined that the entire state of Texas is subject to Title II of the 1975 Amendments.[12] As a consequence, Texas and all political subdivisions within it may no longer conduct English-only elections and, like the Southern states covered by the Voting Rights Act since 1965, may not enforce changes in electoral laws or procedures without first establishing to the satisfaction of the Attorney General or a three-judge district court in the District of Columbia that the change does not have a discriminatory purpose or effect. The 1975 Amendments also made applicable to Texas the provisions of the 1965 Act which authorize the Attorney General to assign federal examiners and observers to register eligible voters and observe the conduct of elections.

Extension of the Voting Rights Act to Texas has given its Mexican American and black citizens reason to hope that they may finally be able to participate in the electoral process in a free and unimpaired manner, and thereby protect their full range of political and civil rights. Texas, however, now seeks to avoid this result, arguing that the Attorney General and Director of the Census, to whom Congress delegated enforcement responsibility, made technical errors in the interpretation and application of the coverage formula of the 1975 Amendments. The decisions below, as well as the brief herein of the Attorney General and Director of the Census, demonstrate that the arguments Texas makes are without merit. Accordingly, this brief will not repeat the Attorney General's arguments. Rather, Section I discusses several additional reasons why Texas' arguments are without merit, and Sections II and III demonstrate that the Attorney General's interpretation of the statute is consistent with one of the primary purposes of the 1975 Amendments, namely, the extension of the protections of the Voting Rights Act to Mexican American and black voters in Texas. Finally, Section IV demonstrates that extension of the Act to Texas will better enable its minority citizens to eliminate discrimination in education, housing and other areas.

[12] 40 Fed. Reg. 43746 (Sept. 23, 1975).

SUMMARY OF ARGUMENT

The brief for the Attorney General and Director of the Census demonstrates that petitioners' arguments regarding the construction and application of the Voting Rights Act Amendments of 1975 are without merit. The construction of the statute by the Attorney General and the Director of the Census should be given great deference because Congress has delegated to them responsibility for enforcing it. Section 4(b) of the statute expressly precludes judicial review of findings of fact by the Attorney General and the Director of the Census made to determine which jurisdictions are covered by the 1975 Amendments. This Court does not have jurisdiction to hear

petitioners' constitutional argument because it was not presented to a three-judge district court as required by 28 U.S.C. §2282.

The Attorney General's construction of the 1975 Amendments implements a primary Congressional purpose, namely, the extension of the protections of the Voting Rights Act of 1965 to minority voters in Texas. The legislative history of the Amendments demonstrates that Texas was among the jurisdictions Congress intended to be covered by the preclearance and related provisions of the 1965 Act. The legislative record reveals that English-only elections, discriminatory enforcement of registration and election laws, overt discrimination against minority voters and candidates, and sophisticated devices which dilute minority votes have combined to exclude Mexican Americans and blacks from participation in the Texas political system. Congress found that these practices are strikingly similar to those which existed in the South prior to the enactment of the Voting Rights Act of 1965. As in the South, case-by-case litigation challenging voting discrimination in Texas has not been effective; political jurisdictions intent on discrimination have either ignored court decrees or evaded them by adopting new but equally discriminatory practices. For these reasons, Congress intended to extend the provisions of the Voting Rights Act to Texas. Thus, petitioners' arguments, which if accepted would exclude it from the Act's coverage, should be rejected.

Extension of the Voting Rights Act to Texas will help to eliminate other forms of discrimination. Mexican Americans in Texas have long suffered discrimination in education, housing, employment and law enforcement. Congress recognized that these forms of discrimination can best be eliminated by guaranteeing Mexican Americans the right to vote and an equal opportunity to participate in the State's political system.

ARGUMENT

I.

TEXAS' ARGUMENTS REGARDING THE CONSTRUCTION AND APPLICATION OF THE VOTING RIGHTS ACT AMENDMENTS OF 1975 ARE WITHOUT MERIT.

Texas contends that the Attorney General misconstrued the phrase "test or device" as used in Section 4(b) by failing to consider the factors set forth in Section 4(d) relating to suits to terminate coverage. Brief for the Petitioners at 13-17 (hereinafter "Pet. Br."). It also contends that the Director of the Census misconstrued the phrase "such persons" as used in Section 4(b) to mean voting age citizens rather than registered voters. Pet. Br. at 8-13.

As the Attorney General's brief shows, judicial decisions and the legislative history of Section 4(b) establish that these arguments are without merit. The Attorney General's and Director of the Census' construction of Section 4(b) is especially important because Congress has delegated to them responsibility for enforcing the Act. This Court has stated that "When faced with a problem of statutory construction, this Court shows great deference to the interpretation given the statute by the officers or agency charged with its administration." *Udall v. Tallman*, 380 U.S. 1, 16 (1965), *rehearing denied*, 380 U.S. 989 (1965).[13] Such deference is particularly appropriate where, as here, the enforcing agencies' construction of the statute is consistent with their prior practices. *Trafficante v. Metropolitan Life Insurance Co.*, 409 U.S. 205, 210 (1972); *Lau v. Nichols*, 414 U.S. 563, 571 (1974) (Stewart, J., concurring).

Texas also contends that, assuming the Director of the Census correctly construed Section 4(b), he improperly

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[13] *Accord, Griggs v. Duke Power Co.*, 401 U.S. 424, 433-34 (1971).

applied it in determining the number of voting age citizens in the state by miscounting the number of non-citizens of voting age. Pet. Br. at 22-26. This argument, however, disregards the last sentence of Section 4(b), which states:

> The determination or certification of the Attorney General or of the Director of the Census under this section . . . shall not be reviewable in any court and shall be effective upon publication in the Federal Register. [42 U.S.C. §1973b(b)].

In *South Carolina v. Katzenbach,* 383 U.S. 301, 322 (1966), this Court upheld the constitutionality of this provision, and emphasized that it precludes judicial review of Census Bureau statistical findings like those Texas now challenges.[14]

Finally, Texas argues that the principles of *Younger v. Harris,* 401 U.S. 37 (1971), and related cases entitled it to a predetermination hearing. Pet. Br. at 18-21, 26-28. The Court of Appeals properly rejected this argument because it amounted to a constitutional challenge to the Voting Rights Act which could only be heard by a three-judge court pursuant to 28 U.S.C. §2282. *Briscoe v. Levi,* 535 F.2d 1259, 1265-66 (D.C. Cir. 1976).

Even if this Court had jurisdiction to hear petitioners' constitutional challenge, it is important to note that the cases Texas cites neither limit Congress' authority under

[14]It should be noted that the scope of review issues presented in this case are different than those presented in *Morris v. Gressette, prob. juris. noted,* 45 U.S.L.W. 3407 (Dec. 6, 1976) (No. 75-1538). *Morris* involves issues regarding the scope of review of Attorney General determinations pursuant to the preclearance provisions of Section 5, whereas this case involves initial coverage determinations pursuant to Section 4(b). Section 5, unlike Section 4(b), does not in any way limit the scope of judicial review.

the Fourteenth and Fifteenth Amendments to protect the voting rights of racial and language minorities, nor provide any basis for Texas' assertion that it was entitled to a predetermination hearing. For example, *Younger v. Harris, supra,* involved the power of federal courts to enjoin state court proceedings, and by its terms has no applicability to situations where state court proceedings are not pending. *Steffel v. Thompson,* 415 U.S. 452 (1974); *Doran v. Salem Inn, Inc.,* 422 U.S. 922 (1975).

In *National League of Cities v. Usery,* 96 S.Ct. 2465 (1976), upon which petitioners also rely, this Court held that Congress may not wield its power under the Commerce Clause to enact statutes which "impair the States' 'ability to function effectively within a federal system,'" 96 S.Ct. at 2474, so as to "'devour the essentials of state sovereignty,'" 96 S.Ct. at 2476, unless, of course, "the federal interest is demonstrably greater" under a "balancing approach." 96 S.Ct. at 2476 (Blackman, J., concurring). National League of Cities has no applicability where, as here, Congress has exercised its authority under the Fourteenth and Fifteenth Amendments to protect the voting rights of minorities in Texas and elsewhere against well-documented, widespread attack. This Court has held that the extension of similar protections to black voters in the South does not unconstitutionally infringe state sovereignty. *South Carolina v. Katzenbach, supra.* Moreover, twelve years of experience since the enactment of the Voting Rights Act demonstrates conclusively that it has not "impair[ed] the [states'] ability to function effectively within a federal system." In fact, federal laws guaranteeing voting equality preserve the federal system and protect the sovereignty of the people.

Similarly, nothing in *Rizzo v. Goode,* 423 U.S. 362 (1976), affects the power of Congress to enact legislation under the Fourteenth and Fifteenth Amendments. That

decision merely overturned a federal court injunction which this Court held ran against city officials who had not themselves committed any constitutional violation. Here, however, Congress has acted to protect the voting rights of Mexican Americans and other language minorities, and has limited the applicability of the statute to those jurisdictions where severe voting discrimination has been documented.

II.

CONGRESS INTENDED THE 1975 AMENDMENTS TO EXTEND THE PROTECTIONS OF THE VOTING RIGHTS ACT OF 1965 TO MEXICAN AMERICAN AND BLACK VOTERS IN TEXAS.

It is a well accepted principle of statutory construction that courts interpret legislation to effectuate Congress' intent. In *United States v. American Trucking Association*, 310 U.S. 534, 542 (1940), this Court held that, "In the interpretation of statutes, the function of the courts is easily stated. It is to construe the language so as to give effect to the intent of Congress."[15]

The legislative history of the 1975 Amendments demonstrates that Congress intended to extend the protections of the 1965 Act to Mexican American voters in the Southwest, and that it was particularly concerned about widespread voting discrimination in Texas. The Report of the House Judiciary Committee states:

> The state of Texas . . . has a substantial minority population, comprised primarily of Mexican Americans and blacks. Evidence before the Subcommittee documented that Texas also has a long history of discriminating against members of both minority

[15] *Accord, United States v. Alpers*, 338 U.S. 680 (1950); *Harrison v. Northern Trust Co.*, 317 U.S. 476 (1943).

> groups in ways similar to the myriad forms of discrimination practiced against blacks in the South.... Outright exclusion and intimidation at the polls are only two of the problems they face....The central problem documented is that of dilution of the vote .... As one witness noted, 'As the Mexican American or Black voter appears to threaten potentially local power structures, a wide variety of legal devices are employed to intimidate, exclude and otherwise deny voting rights to minority citizens.'[16]

The House Report further indicates that voter turnout in Texas in recent Presidential elections has been below 50% of the voting age population, and that "the only reason the state was not covered by the Voting Rights Act of 1965 or by the 1970 Amendments was that it has employed restrictive devices other than a formal literacy requirement."[17]

The House Report,[18] various tables included in the record,[19] and numerous statements during the Congressional debates[20] indicate that Texas was among the jurisdictions Congress intended would be covered by Title II of the 1975 Amendments.[21] The House Report also

[16] H.R. Rep. 94-196 at 17-19. The Report of the Senate Judiciary Committee on the Voting Rights Act Amendments of 1975 is virtually identical to the House Report. S. Rep. No. 94-295, 94th Cong., 1st Sess. (1975).

[17] H.R. Rep. 94-196 at 17.

[18] *Id.* at 24.

[19] *E.g., id,* at 62-63.

[20] *See, e.g.*, 121 Cong. Rec. (June 2, 1975) at 4712 (Remarks of Cong. Edwards); *Id.* at 4746 (Remarks of Congresswoman Jordan).

[21] The legislative record also indicates that Congress intended Title II coverage to be triggered for the entire state of Alaska, certain counties in California, and certain areas of Arizona, Florida, Colorado, New Mexico, Oklahoma, New York, North Carolina, South Dakota, Utah, Virginia and Hawaii. H.R. Rep. 94-196 at 24.

states that Congress intended to reserve Title II coverage for those jurisdictions where "severe voting discrimination was documented."[22] As shown below, the legislative record contains extensive evidence of severe voting discrimination against Mexican Americans and blacks in Texas. Thus, in order to effectuate Congress' intent, as well as for the reasons set forth in the Attorney General's brief, the arguments Texas makes, which if accepted would exclude it from the coverage of Title II, should be rejected.

III.

THE LEGISLATIVE RECORD ESTABLISHES THAT MEXICAN AMERICANS AND BLACKS IN TEXAS HAVE BEEN SUBJECTED TO SYSTEMATIC AND PERVASIVE VOTING DISCRIMINATION.

The legislative record reveals voting discrimination in Texas on a scale paralleling that which existed in the South prior to the enactment of the 1965 Act. English-only elections, discriminatory enforcement of registration and election laws, overt discrimination against minority voters and candidates, and sophisticated devices which dilute minority votes have combined to exclude Mexican Americans and blacks from participation in the Texas political system. The record also demonstrates that widespread voting discrimination persists in Texas notwithstanding the fact that many discriminatory practices have been invalidated by federal courts; like the southern states, Texas has evaded the effect of court orders by adopting new modes of discrimination.

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[22] *Id.* at 3. Title II incorporates the preclearance provisions of Section 5, authorizes the employment of federal examiners and observers by the Attorney General, and requires bilingual elections. Title III of the 1975 Amendments, which applies in areas where "discrimination was less egregious," merely requires bilingual elections. *Id.*

A. English-only elections

The 2.2 million Mexican Americans in Texas comprise approximately eighteen percent of the State's population. An estimated 50 percent of the Mexican American population speak only Spanish, and an estimated 90 percent speak Spanish at home.[23] Nevertheless, until 1975, Texas printed all registration and other electoral materials, including ballots, in the English language only.[24] To make matters worse, Texas statutes long prohibited assistance at the polls to Spanish speaking citizens and others illiterate in English. In *Garza v. Smith*, 320 F. Supp. 131 (W.D. Tex. 1970), *vacated and remanded for appeal to the Fifth Circuit*, 401 U.S. 1006 (1971), *appeal dismissed for lack of jurisdiction*, 450 F.2d 790 (5th Cir. 1971), the court invalidated these statutes, stating:

> We cannot perceive how exercise of the 'fundamental right to vote,' which Texas undeniably grants to all illiterates who meet the qualifications prescribed by the state constitution, can be more than an empty ritual if the right itself does not include the right to be informed of the effect that a given physical act of voting will produce. [320 F. Supp. at 137].

Despite the *Garza* decision and the fact that Texas statutes now require that assistance be given non-English speaking and illiterate voters,[25] election officials in a number of Texas counties continue to refuse to provide or allow it.[26] Congressional witnesses testified that these

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[23] 1975 House Hearings at 804.

[24] *Id.* at 806.

[25] Tex. Elec. Code Ann. art. 8.13 (1976-77 Supp.) (Vernon).

[26] United States Commission on Civil Rights, Staff Memorandum, Expansion of the Coverage of the Voting Rights Act, 21-23

[footnote continued]

practices have impaired the voting rights of Texas citizens illiterate in English just as effectively as literacy tests long abridged the voting rights of southern blacks.[27] This testimony is substantiated by federal court decisions which have struck down English-only elections in areas where substantial numbers of non-English speaking voters reside.[28]

Texas now argues that a newly enacted bilingual election statute[29] has corrected the discriminatory impact of

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(June 5, 1975), [hereafter "June 1975 CRC Staff Memorandum"]; 1975 House Hearings at 819. The June 1975 CRC Staff Memorandum was prepared at the request of Senator Tunney, Chairman of the Subcommittee on Constitutional Rights of the Senate Judiciary Committee.

[27] *E.g.*, 1975 House Hearings at 78, 369, 806.

[28] *See, e.g., Arroyo v. Tucker*, 372 F. Supp. 764 (E.D. Pa. 1974); *Torres v. SACS*, 73 Civ. 3921 (S.D.N.Y. July 25, 1974); *Puerto Rican Organization For Political Action v. Kusper*, 350 F. Supp. 606 (N.D. Ill. 1972), *aff'd*, 490 F.2d 575 (7th Cir. 1973). *See also New York v. United States*, 419 U.S. 888 (1974), *aff'g* 65 F.R.D. 10 (D.D.C. 1974) (an election conducted only in English where significant concentrations of Spanish speaking voters reside is a discriminatory "test or device"). The discriminatory impact of English-only elections in Texas is caused in part by the segregated and unequal education provided Mexican Americans. *Infra*, at 46-47. In enacting the 1975 Amendments, Congress found that:

> Citizens of language minorities . . . are from environments in which the dominant language is other than English. In addition they have been denied equal educational opportunities by state and local governments, resulting in severe disabilities and continuing illiteracy in the English language. 42 U.S.C.A. § 1973b(b)(1) (1976 Supp.).

The legislative record and judicial decisions establish that these conditions are particularly serious in Texas. *E.g.*, 1975 House Hearings at 803-04, 864; *Cisneros v. Corpus Christi Independent School District*, 324 F. Supp. 599 (S.D. Tex. 1970), *aff'd in relevant part*, 469 F.2d 142 (5th Cir. 1972) (*en banc*), *cert. denied*, 413 U.S. 920 (1973), *rehearing denied*, 414 U.S. 881 (1973). In *Gaston County v. United States*, 395 U.S. 285 (1969), this Court recognized the relationship between education disparities and voting discrimination.

[29] Tex. Elec. Code Ann. art. 1.08a (1976-77 Supp.) (Vernon).

English-only elections. Pet. Br. at 14. However, Congress viewed the use of English-only elections as evidence of prior discrimination requiring the application of the Voting Rights Act. The fact that Texas now claims to have ended English-only elections no more eliminates the need for the application of the Act to it than the end of literacy tests eliminated the need for the Act in the South.

In any event, several witnesses testified that the bilingual election law was passed to dissuade Congress from extending the Voting Rights Act to the state,[30] and as drawn provides little if any assistance to Spanish speaking voters. For example, Congresswoman Jordan testified that the law exempts from its requirements 102 of Texas' 254 counties and "countless precincts within the remaining counties if the precinct contains less than 5% of persons of Spanish origin. Nobody knows how many Mexican Americans are passed over by this exclusion."[31] Congresswoman Jordan also emphasized that "... more importantly, by excluding precincts within counties from coverage, local officials are provided an incentive to gerrymander precinct lines . . . and thereby escape the requirement that bilingual ballots be provided."[32]

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[30] 1975 Senate Hearings at 457, 462-63, 913.

[31] *Id.* at 246.

[32] *Id.* By letter dated March 8, 1976, to the General Counsel for the Secretary of State of Texas, the Attorney General indicated that he would not object to implementation of the Texas bilingual election law. The letter notes, however, that Section 4(f)(4) of the Voting Rights Act applies to the entire State of Texas, and requires that effective bilingual materials and assistance be provided at all stages of the electoral process and within all Texas counties, "including those that are allowed, but not mandated, to comply with the provisions of the Texas bilingual election law." Another Congressional witness testified that subdivision 2(c)(3) of the Texas Bilingual Election Statute:

[footnote continued]

B. Registration

The history of registration in Texas provides stark evidence of systematic efforts to ignore and evade the effect of judicial decrees entered to remedy voting discrimination against Mexican Americans and blacks. The process began several generations ago when it took five lawsuits over a twenty-five year period to eliminate the white primary.[33] But those decisions did not end the State's effort to exclude minorities from the electoral process. In 1966, Texas was one of the few states which still imposed a poll tax. In *United States v. Texas*, 252 F. Supp. 234 (W.D. Tex.), *aff'd per curiam*, 384 U.S. 155 (1966), the tax was invalidated;[34] the district court found that the tax had been enacted to disenfranchise minority citizens. 252 F. Supp. at 245.

In the wake of this decision, the Texas legislature enacted what one federal court has described as "the most restrictive voter registration procedures in the nation. . . ." *Graves v. Barnes* I, 343 F. Supp. 704, 731 (W.D. Tex. 1972), *aff'd in relevant part sub nom., White v. Regester, supra.* This new law required

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. . . provides that ballots can *either* be printed in bilingual form or, at the decision of local officials, the election materials could continue to be printed only in English if a translation ballot were posted. . . .

. . . it is quite common to hold more than one election at the same time – thus requiring the voter to consider as many as three or more separate ballots. There was great concern on the part of the Mexican American leaders . . . that this posting alternative would only add to the confusion present on Election Day. [1975 Senate Hearings at 456].

[33] *Nixon v. Herndon*, 273 U.S. 536 (1927); *Nixon v. Condon*, 286 U.S. 73 (1932); *Grovey v. Townsend*, 295 U.S. 45 (1935); *Smith v. Allright*, 321 U.S. 649 (1944); *Terry v. Adams*, 345 U.S. 461 (1953).

[34] *See Harper v. Virginia Board of Elections*, 383 U.S. 663 (1966).

annual registration and prescribed a four-month registration period ending nine months prior to November elections.[35] In *Beare v. Smith*, 321 F. Supp. 1100 (S.D. Tex. 1971), *aff'd sub nom., Beare v. Briscoe*, 498 F.2d 244 (5th Cir. 1974), these requirements were held to violate the equal protection clause because they disenfranchised over a million Texans otherwise qualified to vote. 321 F. Supp. at 1108. *See also Graves v. Barnes* I, *supra.*

Following *Beare v. Smith*, the Texas registration law was again modified, this time to authorize an automatic three-year registration renewal whenever a voter voted in a state or county election.[36] The law also required that notice be sent to all persons whose registration was expiring, but witnesses testified that the reregistration forms were in English only, and that a high proportion of Mexican Americans were required to reregister because past discrimination had inhibited them from voting.[37]

In 1975, after the Voting Rights Act was extended to Texas, the state again amended its registration procedures to require a purge of all currently registered voters.[38] The purge was never implemented because the Attorney General, acting pursuant to Section 5, objected on the ground that it would have a discriminatory impact on blacks and Mexican Americans. The letter of objection states:

> . . . We cannot conclude that the effect of the total purge to initiate the reregistration program will not be discriminatory in a prohibited way.
>
> With regard to cognizable minority groups in Texas, namely, blacks and Mexican Americans, a study of

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[35] TEX. CONST. art. VI, §2 (V.A.T.C.) (1966); Tex. Elec. Code Ann. art. 5.11a (Vernon).

[36] Tex. Elec. Code Ann. art. 5.18(b) (1975) (repealed).

[37] *E.g.*, 1975 House Hearings at 806; 1975 Senate Hearings at 745.

[38] Texas Senate Bill 300 (1975).

their historical voting problems and a review of statistical data, including that relating to literacy, disclosed that a total voter registration purge under existing circumstances may have a discriminatory effect on their voting rights. Comments from interested parties as well as our own investigation, indicate that a substantial number of minority registrants may be confused, unable to comply with the statutory registration requirements of Section 2, or only able to comply with substantial difficulty. Moreover, representations have been made to this office that a requirement that everyone register anew, on the heels of registration difficulties experienced in the past, could cause significant frustration and result in creating voting apathy among minority citizens, thus, erasing the gains already accomplished in registering minority voters.[39]

Finally, numerous witnesses testified that Mexican Americans and blacks in Texas are subjected to discriminatory treatment by local registrars. The abuses described include failure to place the names of duly registered minorities on the voting lists, unavailability of voter registration applications for registration drives, refusals to appoint minorities as deputy registrars,[40] and discriminatory enforcement of residence requirements.[41]

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[39] Letter of objection dated December 10, 1975.

[40] *E.g.*, 1975 House Hearings at 854; 1975 Senate Hearings at 245, 767, 1004-1007. *See also* H.R. Rep. 94-196 at 16; June 1975 CRC Staff Memorandum at 21-24.

[41] *E.g.*, 1975 Senate Hearings at 245-46, 947-49. Texas courts have characterized residency as an "elastic" concept which is extremely difficult to define and dependent primarily upon the intention of the applicant. This "elasticity," coupled with the presumption under Texas law that decisions of local officials

[footnote continued]

C. Discrimination at the polls

Civil Rights Commission reports and other testimony document widespread physical and economic intimidation of minority voters. Again and again, witnesses indicated that official harassment and fear of economic reprisals deter minority voting as well as registration in Texas.[42]

Civil Rights Commission observers reported physical intimidation and harassment of minority poll watchers and voters, and instances of police officers making "excessive and unnecessary appearances" at predominantly Mexican American precincts and threatening Mexican American voters.[43] After Mexican Americans in Pearsall had conducted a drive to encourage absentee voting, the sheriff "went to the homes of the Mexican Americans who had voted or were going to vote absentee intimidating them by warning that they had to be out of the area on election day. . . ."[44] Law enforcement officers in Pearsall have also frequented predominantly Mexican American precincts and taken pictures of those voting.[45]

Other witnesses described economic intimidation of minority voters, including threatened loss of jobs, credit, and business.[46] A telegram to the Department of Justice from the Chairman of the Texas Advisory Committee to

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will be overturned only if contestants meet a heavy burden of proof, facilitates discriminatory application of registration requirements. *See Guerra v. Pena*, 406 S.W.2d 769 (C.C.A. Tex. 1966).

[42] *E.g.*, 1975 House Hearings at 483-85, 521-23, 819-20, 853-56; 1975 Senate Hearings at 751-54; 967-71; H.R. Rep. 94-196 at 18.

[43] June 1975 CRC Staff Memorandum at 24-28.

[44] 1975 House Hearings at 522. *See also* 1975 Senate Hearings at 947.

[45] 1975 Senate Hearings at 948. *See also Allee v. Medrano*, 416 U.S. 802 (1974).

[46] *E.g.*, 1975 House Hearings at 521-22.

the Civil Rights Commission stated that the Committee had received complaints that "voters have been economically intimidated by threats of financial loss for failure to support certain candidates."[47] The Civil Rights Commission study of Uvalde County reported that fear of job loss and reduction of welfare benefits is a major deterrent to Mexican American political participation.[48]

Economic and physical intimidation of minority voters is facilitated by certain features of Texas election law, including the often unbridled discretion vested in local officials. A former Texas Secretary of State noted:

> The underlying problem is economic or physical intimidation at the local level of minority voters who are predominantly in lower income groups. Texas statutes place all election duties upon local officials. Even if the Secretary of State has access to information concerning intimidation or improper influence of a voter, the office has no statutory authority to take even minimal action. In addition, the [state] Attorney General can intervene only where irregularities involve more than one county.[49]

Other witnesses testified that a Texas "stub law" which requires voters to sign a ballot stub facilitates election challenges which intimidate Mexican American and black voters.[50] The testimony describes the opening of

[47] 1975 House Hearings at 819.

[48] June 1975 CRC Staff Memorandum at 33.

[49] 1975 Senate Hearings at 247-48. *See also* n. 41, *supra*.

[50] Texas Election Code Ann. Art. 8.15 requires that a voter sign a ballot stub containing a serial number corresponding to the serial number on the ballot. The stubs and ballots are deposited in separate boxes. If an election is challenged both boxes may be opened and the stubs used to trace ballots to the voters who cast them.

ballot boxes, the subpoenaing of minority voters, and the tracing of their votes followed by economic reprisals, all of which have a chilling effect on minority political participation.[51] In Pearsall, for example, a petition challenging election results stated precisely the number of votes being challenged and the reasons each vote was allegedly invalid. Specific allegations of this type could not have been made unless the ballot box had already been opened. Approximately 200 Mexican American voters were subpoenaed (no whites were subpoenaed), and the challenged votes were ultimately declared invalid.[52] In the course of a similar election challenge in Cotulla over 150 voters were subpoenaed, all of whom were Mexican Americans.[53] The discriminatory impact of such election challenges was summarized during the Congressional hearings:

> The manner in which these investigations are carried out as perceived by the Mexican American communities involved has the effect of discouraging further registration and voting. The effect is intimidation—the result is fear of exercising the constitutionally guaranteed right to vote.[54]

The legislative record also indicates that the stub law operates as a literacy test because it requires voters to sign their ballot stubs. One witness described an election won by a Mexican American candidate by 65 votes. The results were challenged, the stub box opened, a determination made that approximately 100 Mexican Ameri-

[51] *E.g.*, 1975 House Hearings at 363-64, 485, 521-22; 1975 Senate Hearings at 731-33, 946-49.

[52] 1975 Senate Hearings at 946-47.

[53] *E.g.*, *id.* at 948-49.

[54] 1975 House Hearings at 404.

can voters had signed their stubs with an "X," and the opposing white candidate was declared elected.[55]

Official intimidation, harassment, and discrimination infect all stages of the voting process in Texas. Election officials in La Salle, Uvalde and Frio Counties denied assistance to non-English speaking voters even after Texas laws were amended to require it.[56] Other witnesses described excessive demands for personal identification required only of Mexican American voters,[57] challenges to the residence of voters whom election officials felt might vote for the Raza Unida candidate, harassment of Raza Unida campaign workers even though they were working the polls outside the distance markers,[58] selective invalidation of ballots cast by minority voters, last minute unannounced changes in voting times and locations,[59] and the location of polling places in areas traditionally off-limits to or inconvenient for minorities. For example, in Jefferson County, which is approximately 25% black, polling places were located in a rod and gun club which had a totally white membership, and in a white school in an all-white section of a precinct.[60] In Villa Coronado, voting officials refused to set up a polling place in a Mexican American neighborhood where 75% of the district's

[55] 1975 House Hearings at 732.

[56] *Id.* at 818.

[57] *E.g., id.* at 810, 820; 1975 Senate Hearings at 767-69.

[58] *E.g.*, 1975 House Hearings at 820; 1975 Senate Hearings at 741-43, 967-71. The Raza Unida party is one of three political parties that Texas law officially recognizes. It is supported predominantly by Mexican American voters.

[59] 1975 House Hearings at 810, 860. *See generally* June 1975 CRC Staff Memorandum at 24-27.

[60] June 1975 CRC Staff Memorandum at 26.

population resided, thus forcing those voters to travel seven miles in order to cast their ballots.[61]

D. Discrimination against minority candidates

Mexican Americans and blacks in Texas have also been denied an equal opportunity to run for elective office. Until 1972, a filing fee discriminated against minority candidates just as effectively as the poll tax discriminated against minority voters. Over 35% of the Mexican Americans and blacks in Texas are impoverished.[62] In *Bullock v. Carter*, 405 U.S. 134 (1972), this Court invalidated Texas' filing fee system on the ground that it denied less affluent citizens an equal opportunity to run for office. Several courts on similar grounds have invalidated requirements that a candidate own real property within the district in which he or she is running.[63] In *Pablo Puente v. City of Crystal City*, Civ. Ac. No. DR-70-CA-4 (W.D. Tex. April 3, 1970), the court found that a requirement that city council members be property owners discriminated against Mexican Americans.[64] Likewise in *Graves v. Barnes* I, *supra*, the court found that the cost of con-

[61] 1975 House Hearings at 856. *See also* 1975 Senate Hearings at 947, where evidence was given that when the polling place in Pearsall, Texas was located in the Mexican American part of town, voting participation among Mexican Americans rose to the highest levels ever; when the polling place was relocated in the white section of town, Mexican American participation dropped by 400 votes.

[62] *Infra*, at 47.

[63] *E.g., Connerton v. Oliver*, 333 F. Supp. 201 (S.D. Tex. 1971); *Duncantell v. Houston*, 333 F. Supp. 973 (S.D. Tex. 1971); *Gonzales v. Sinton*, 319 F. Supp. 189 (S.D. Tex. 1970). *See also Turner v. Fouche*, 396 U.S. 346 (1970).

[64] A Texas law that only persons who have rendered property for taxation may vote in bond issue elections was invalidated in *Hill v. Stone*, 421 U.S. 289 (1975), *rehearing denied*, 422 U.S. 1029 (1975).

ducting electoral campaigns in at-large state legislature races in Bexar County was so excessive that it inhibited the recruitment and nomination or election of Mexican American candidates. 343 F. Supp. at 731.

The expense of running in at-large elections is not the only reason their widespread use throughout the state[65] discriminates against minority candidates. One witness testified that considerably fewer minority candidates compete in the Democratic primary in at-large districts because of a common sense realization that their prospects of winning at-large races are slim.[66]

Testimony also established that in nine major Texas counties studied, candidates most often were selected either by slate-making groups, such as organized labor or businessmen, or by a more informal process which requires the candidate to have access to social, business, educational and professional associations.[67] Minorities have been denied access to both processes. In *Graves v. Barnes* II, 378 F. Supp. 640, 649 (W.D. Tex. 1974) *vacated and remanded for determination of mootness sub nom. White v. Regester*, 422 U.S. 935 (1975), the court found that in Jefferson County endorsement by a local labor organization usually leads to election, but that the local organization had never slated a black man or woman. The court noted "When called upon to explain their lack of enthusiasm for black candidates, the local labor leaders reported to the state . . . [organization] and the local black community that they would not support a black person because of the racial hostility of their predominantly white membership."[68]

[65] *Infra*, at 37.

[66] 1975 House Hearings at 436. *See Graves v. Barnes* I, *supra*, at 731-32.

[67] 1975 House Hearings at 436.

[68] The hearing record also describes a discriminatory tactic adopted by the City Council of Uvalde, which met and decided in secret not to put on the ballot the name of a duly qualified Chicano candidate for the Council. The candidate filed an action in state court. The court found that his constitutional rights had been violated. 1975 House Hearings at 854. *See also Garcia v. Carpenter*, 525 S.W.2d 160 (Tex. Sup. Ct. 1975) (arbitrary refusal to place Mexican American candidate's name on the ballot as a candidate for mayor).

The long and pervasive history of discrimination against minority candidates by traditional, well-established political organizations has encouraged minorities to establish new political parties.[69] This development, however, has not escaped the attention of Texas officials intent on perpetuating discrimination against minority candidates and voters. After *American Party of Texas v. White*, 415 U.S. 767 (1974), *rehearing denied*, 416 U.S. 1000 (1974), invalidated a Texas law which denied minor party candidates a place on absentee ballots, a new law was passed prohibiting minor political parties from holding primary elections. Texas reimburses the costs of conducting primary elections, but not the costs of holding conventions. The Attorney General objected to this new law because its impact would fall "only on one party, the Raza Unida party, and significantly limit the opportunity for Mexican Americans to nominate, on an equal basis with others, a candidate of their choice."[70]

There is also substantial evidence of racially based campaign tactics in Texas. In *White v. Regester, supra,* this Court emphasized the district court's finding that the Dallas Committee for Responsible Government, a white dominated organization that effectively controls Democratic party slating in Dallas County, had as recently as 1970 relied upon "racial campaign tactics in white pre-

[69] *See Williams v. Rhodes*, 393 U.S. 23 (1968). *See generally* Mazmanian, *Third Parties in Presidential Elections* (1974).

[70] Letter of objection dated January 23, 1976.

cincts to defeat candidates who had the overwhelming support of the black community." 412 U.S. at 767. One Congressional witness described thirty-second spots on Spanish radio stations which warned Mexican American voters that if they did not comply with all election laws, they could be sent to jail or fined $500.[71] Another witness said that racial campaigning was evident in nine major Texas counties studied, and that such campaigning is particularly discriminatory given racially polarized voting patterns in at-large election districts.[72]

Finally, the Civil Rights Commission advised Congress that it found economic and physical intimidation of minority candidates in Texas. One candidate who reported that he had suffered harassment on the job told a Commission interviewer:

> "... you see why we have such a difficult time even convincing some Chicanos to file for office, the fear for their jobs, fear of all kinds of pressure."[73]

E. Dilution of minority votes

The hearing record also documents continuous efforts by Texas officials to subject minority voters and candidates to "sophisticated" discriminatory devices such as malapportionment, gerrymandering, at-large elections, majority runoff requirements and the place system, all of which dilute the value of the vote. The House Judiciary Committee concluded that blatant intimidation and other

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[71] 1975 House Hearings at 806.

[72] *Id.* at 454-55.

[73] 1975 Senate Hearings at 999. *See generally* United States Commission on Civil Rights, Staff Memorandum, Summary of Preliminary Research on the Problems of Participation by Spanish Speaking Voters in the Electoral Process, April 23, 1975. Numerous witnesses described many instances of outright intimidation of minority candidates. *E.g.*, 1975 House Hearings at 521, 826-27, 854, 861; 1975 Senate Hearings at 735, 753-56, 774.

forms of discrimination against Mexican American and black voters in Texas

> are not the only barriers obstructing equal opportunity for political participation... The central problem documented is that of dilution of the vote —arrangements by which the vote of minority electors are made to count less than the votes of the majority. [74]

1. Malapportionment and gerrymandering

The record is replete with descriptions of malapportioned or gerrymandered electoral districts in Texas.[75] In 1969 and again in 1974 the Commissioners Court in Anderson County reapportioned and redistricted the county's four precincts.[76] In *Robinson v. Commissioners Court, Anderson County*, Civ. Ac. No. TY-CA-73-236 (E.D. Tex. March 15, 1974, *aff'd in relevant part*, 505 F.2d 674 (5th Cir. 1974),[77] the district court held that "Since the Commissioners Court did not rely on available 1970 census data in effecting the modification of the precinct lines, but rather placed exclusive reliance upon voting registration figures, the reapportionment is distorted." The court also found that the realignment followed neither established census enumeration districts

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[74] H.R. Report 94-196 at 18.

[75] *Cf. White v. Weiser*, 412 U.S. 783 (1973), where this Court invalidated reapportionment of Texas' Congressional districts because of an unequal distribution of population.

[76] The Commissioners Court of Anderson County, like Commissioners Courts throughout Texas, is a legislative body for the county and is comprised of Commissioners and a County Judge. Each Commissioner is elected from a separate precinct, but the Judge is elected at-large.

[77] The district court's opinion is reprinted in the 1975 Senate Hearings at 248.

nor logical boundaries. Rather, "The Commissioners drew a 'wedge' through the greatest black concentration within the southwestern portion of the city of Palestine, dividing the black community . . . into three Commissioner precincts." The court concluded that the redistricting and reapportionment were racially motivated. The Fifth Circuit affirmed, stating:

> . . . Unfortunately, the disrespect of voting rights is not a recent innovation in county government in Texas. *See generally, Graves v. Barnes*, W.D. Tex. 1972 (3 judge), 343 F. Supp. 704, *aff'd in part sub nom. White v. Regester*, 1973, 412 U.S. 755, 93 S.Ct. 2332, 37 L.Ed.2d 314; *Avery v. Midland County*, 1968, 390 U.S. 474, 88 S.Ct. 1114, 20 L.Ed.2d 45. Nor, unfortunately, is unconstitutional dilution of voting rights only a very old part of our history. *See, e.g., Graves v. Barnes*, W.D. Tex. 1974 (3 judge), 378 F. Supp. 640. Caesar found Gaul divided into three parts. Here we are confronted with a County Commissioners Court which has cut the county's black community into three illogical parts in order to dilute the black vote in precinct elections, acting as a modern Caesar dissecting its private Gaul. Such apportionment poisons our representative democracy at its roots. Our constitution cannot abide it. [505 F.2d at 676].

In *Weaver v. Commissioners Court, Nacogodoches County*, Civ. Ac. No. TY-73-CA-209 (E.D. Tex. March 15, 1974), another case discussed in the hearing record,[78] it similarly was held that an apportionment plan in Nacogodoches County constituted a racial gerrymander which "effectively fragment[ed] black voting strength . . . by dividing the area of heavy black population . . . into separate commissioner [districts]." The court found a "general lack of responsiveness on the part

[78] 1975 House Hearings at 366.

of city and county officials in Nacogodoches to the particular lives, needs and interests of black citizens of the county."[79]

In Crockett County reapportionment was used to dilute the value of Mexican American votes. In 1974, a Mexican American received the Democratic nomination, usually tantamount to election, for a seat on the County Commissioners Court. The precinct from which he was nominated was substantially Mexican American, as was one other. Prior to the general election, the Commissioners Court reapportioned the county on the basis of registered voters, not population. Since registration among Mexican Americans had been low, the Commissioners were able to isolate practically all of the Mexican Americans into one Commissioner's district, thus ensuring that only one Mexican American would be elected.[80]

Extension of the Voting Rights Act to Texas already has limited malapportionment and gerrymandering of electoral districts. The Attorney General objected to the Crockett County Commissioners Court's reapportionment of its precincts. The letter of objection states:

> Our experience indicates that Mexican Americans generally have a lower rate of voter registration than do Anglos. Thus an apportionment based on registration data is likely to have a dilutive effect on the vote of Mexican Americans. *See Eli v. Klahr*, 403 U.S. 108, 118-19 (1971) (Douglas, J., concurring).[81]

[79] *See* discussion of *Weaver v. Muckleroy*, Civ. Ac. No. 5524 (E.D. Tex. Jan. 27, 1975), *infra*, at 38-39, for evidence of the persistent efforts of Nacogodoches to dilute the value of black votes.

[80] 1975 House Hearings at 366.

[81] Letter of objection dated July 7, 1976.

The Attorney General also objected to reapportionment of Commissioners Court's precincts in Uvalde County, stating:

> . . . According to the 1970 census, Uvalde County is 50.7% Mexican American, 47.8% Anglo and 1.5% black. Information available to us indicates that the Commissioner Precinct 2 under the redistricting plan has an overwhelming concentration of Mexican Americans and in addition exceeds the norm of an ideal (population) district by a percentage of at least 11%. The other precincts, two of which are substantially over-represented, apparently have deviations of similar scope resulting in a total deviation range in excess of 20%. Thus, it would appear that the precinct with the highest percentage of Mexican Americans is the most under-represented while at least two of the remaining precincts, each with evident Anglo population majorities, show deviations indicating over-representation.[82]

In addition, the Attorney General has objected to gerrymandered and registration-based reapportionments in Waller[83] and Frio[84] Counties, and has twice objected to plans submitted by the state of Texas subdistricting

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[82]Letter of objection dated October 13, 1976.

[83]Letter of objection dated July 27, 1976.

[84]Letter of objection dated April 16, 1976. In *Padillo v. Valverde County*, Civ. Ac. No. 9062 (C.C.A. Tex.) an action was filed in 1969 in Texas District Court charging malapportionment and gerrymandering of Valverde County Commissioner Court precincts. Plaintiffs' amended complaint alleged that 94% of the county's population resided in one precinct and that the remaining 6% of the county's residents lived in the other three precincts. The amended complaint also alleged that precinct lines had been gerrymandered to discriminate against the county's substantial Mexican American population. The parties agreed to a redistricting plan, and settled the matter out of court.

multi-member Texas House of Representative districts on the ground that the plans gerrymander minority areas.[85] Despite the Attorney General's objection, the Frio County Commissioners announced they would conduct a May 1, 1976 primary election pursuant to the objectionable plan. Mexican American voters in Frio County secured a temporary restraining order enjoining the primary, *Sylva v. Fitch*, Civ. Ac. No. SA-76-CA-126, (W.D. Tex. Sept. 26, 1976), and subsequently reached an agreement with the County Commissioners regarding a new apportionment plan. The new plan was approved by the federal court, but the Commissioners are now attempting to set it aside on appeal.

Congressional witnesses underscored the widespread use and discriminatory impact of malapportionment and gerrymandering.[86] One witness stated:

> . . . There are 254 counties in Texas each electing a County Commissioners Court. . . . In almost every plan I have been asked to look into, minority political rights have been gerrymandered in ways similar

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[85]Letters of objection dated January 23, 1976 and January 26, 1976. In the January 23 letter of objection, the Attorney General notes:

> Regarding Districts 32A-32I in Tarrant County, it appears that portions of the new single-member districting lines are drawn through cognizable minority residential concentrations resulting in an apportionment or fragmenting of these areas into four districts, only one of which has a significant minority population, while fairly drawn alternative districting plans would avoid placing portions of the minority residential concentrations in as many districts and would result in two districts with significant minority populations.

See Graves v. Barnes I and II, *supra*.

[86]*E.g.*, 1975 House Hearings at 395-96, 494-95; 1975 Senate Hearings at 245.

to those documented in Anderson, Nacogodoches and Crockett Counties.[87]

2. Multi-member districting

Congress found and federal courts have held that multi-member districting in Texas unconstitutionally dilutes the value of Mexican American and black votes. Several courts have also found that minority votes are further diluted by the use in such districts (and in multi-member districts that do not themselves have a diluting effect) of the place system and the requirement of a majority runoff.[88]

The reapportionment plan adopted for the Texas State House of Representatives based on the 1970 census is illustrative of the discriminatory use of multi-member districting and official evasion of judicial decrees. The hearing record indicates that the initial plan was declared unconstitutional by a state district court within days after it was enacted.[89] The Texas Supreme Court affirmed. *Smith v. Craddick*, 471 S.W.2d 375 (Tex. Sup. Ct. 1971). Although the Texas Constitution states that in such a situation the state Legislative Redistricting Board must prepare an alternate plan of apportionment, the members of the Board refused to act until expressly ordered to do so by the Texas Supreme Court. *Mauzy v. Legislative Redistricting Board*, 471 S.W.2d 570 (Tex. (Sup. Ct. 1971). The court warned the Board that the use of multi-member districts might dilute the electoral rights of Mexican Americans and blacks:

> In exercising its discretion as to whether to create multi-member districts within a single county, we

[87] 1975 Senate Hearings at 956.

[88] *See* discussion, *infra*, at 36-41.

[89] 1975 House Hearings at 366.

> must assume that the Board will give careful consideration to the question of whether or not the creation of any particular multi-member district would result in discrimination by minimizing the voting strength of any political or racial elements of the voting population. [471 S.W.2d at 575].

Notwithstanding this warning, Board members admitted under oath that they did not at any point consider the possible effect of multi-member districts on Mexican Americans or blacks.[90] Instead, the Board adopted a multi-member districting plan which was invalidated in a series of federal court actions. In the first of these actions, *White v. Regester, supra,* this Court affirmed the judgment of a three-judge district court (*Graves v. Barnes* I, *supra*) invalidating multi-member districts in Dallas and Bexar Counties and ordering those districts to be redrawn into single-member districts. This Court reiterated the lower court's findings regarding the history of official racial discrimination in Texas, Texas laws requiring a majority vote as a prerequisite to nomination, the use of a "place system," racial campaign tactics, and the district court's conclusion that " 'the black community has been effectively excluded from participation in the Democratic primary selection process,' . . . and was therefore generally not permitted to enter into the political process in a reliable and meaningful manner." 412 U.S. at 766-67. This Court also relied on the lower court's findings that Mexican Americans in the Bexar community along with other Mexican Americans in Texas had long suffered from invidious voting discrimination, and sustained the judgment of the district court that:

> . . . the multi-member districts, as designed and operated in Bexar County, invidiously excluded Mexican Americans from effective participation in politi-

[90] 1975 House Hearings at 366-67.

cal life, specifically in the election of representatives to the Texas House of Representatives [412 U.S. at 769].

On remand, multi-member districts in Tarrant, El Paso, Travis, Jefferson, Lubbock, McClennan, and Nueces Counties were found to deny Mexican American and black voters an equal opportunity to participate in the electoral process. *Graves v. Barnes* II, *supra.* In addition, the Galveston County multi-member district was held to be the result of an unconstitutional gerrymander. Subsequently, Texas adopted a new reapportionment plan which replaced the multi-member districts with single-member districts. For this reason, this Court vacated and remanded for a determination of mootness. *White v. Regester,* 422 U.S. 935 (1975). However, before the district court could consider the matter the Attorney General objected to three gerrymandered districts contained in the plan.[91] *Graves v. Barnes* III, 408 F. Supp. 1050, 1052 (W.D. Tex. 1976).

3. The place system, majority runoff requirements, and at-large elections

The foregoing multi-member districting decisions have not ended efforts in Texas to dilute the value of minority votes. Congress found that a substantial number of Texas jurisdictions have now adopted the place system, majority runoff requirements, and at-large elections, and that each of these "sophisticated" devices abridges the voting rights of Texas Mexican Americans and blacks.[92]

The place system requires candidates in multi-member districts or at-large elections to run for a specified numbered post. Each voter casts one vote for one candidate

[91] *See* discussion, *supra,* at n. 85.

[92] H.R. Rep. 94-196 at 18-19.

for each post. The system thus lends visibility to specific candidates in an at-large field, and makes it possible to "spotlight" minority candidates in specific match races. By matching minority candidates with particularly strong opposing candidates, minority voters are effectively prevented from combining their voting strength in support of a candidate running at-large.[93]

Majority runoff and at-large election requirements likewise dilute the votes of minorities. Both devices are particularly discriminatory when adopted by jurisdictions with a substantial, but not majority, minority population. This is especially true when these devices are combined with a place system. Each tends to ensure that through bloc voting the white majority can elect the candidate of its choice, but that minority populations cannot.[94]

The record establishes that the at-large structure, with accompanying variations of the majority runoff and numbered place system, is used in at least 1,300 political subdivisions in Texas, including all of the more than 1,100 school districts in the state and 174 of its largest cities.[95]

The House Judiciary Committee concluded that these devices had become particularly widespread "in the wake of the recent emergence of minority attempts to exercise the right to vote," and that their use ". . . effectively den[ies] Mexican American and black voters in Texas

[93] 1975 House Hearings at 402, 422-23. *See generally* Young, *The Place System in Texas Elections,* Austin, Texas: Institute of Public Affairs, 1965, reprinted in part in the 1975 House Hearings at 986 *et seq.*

[94] 1975 House Hearings at 389-90, 402-03, 417-28, 1975 Senate Hearings at 488-93. *See also White v. Regester, supra: Whitcomb v. Chavis,* 403 U.S. 124 (1971); *Zimmer v. McKeithen,* 485 F.2d 1297 (5th Cir. 1973), *aff'd sub nom. East Carroll Parish School Board v. Marshall,* 424 U.S. 636 (1976).

[95] 1975 Senate Hearings at 462.

political access in terms of recruitment, nomination, election, and ultimately, representation."[96] This finding is substantiated by a number of judicial decisions reprinted or summarized in the legislative record. For example, in *Lipscomb v. Wise*, 399 F. Supp. 782, 790 (N.D. Tex. 1975),[97] the court held that at-large voting in Dallas dilutes the value of black votes, stating:

> . . . it is clear that the present system of requiring all members of the Dallas City Council to run at-large on a city-wide basis involves dilution. In this regard . . . two factors are of particular significance. These are the existence of past discrimination in general, which precludes effective participation in the electoral system and a customary lesser degree of access to the process of slating candidates than enjoyed by the white community.
>
> . . . Meaningful participation in the political process must not be a function of grace, but rather is a matter of right.

Similarly, in *David v. Garrison*, Civ. Ac. No. TY-73-CA-113 (E.D. Tex. 1975),[98] the court invalidated the city of Lufkin's use of at-large elections combined with a majority vote requirement and place system. The first black to run for the City Commission obtained a plurality of votes in the initial election, but was defeated in the runoff. The black candidate received total support from black voters but negligible support from whites. The court held that:

> The majority place system, as utilized by the City of Lufkin, operates to minimize the voting strength of the black residents, and, coupled with the at-large system, tends to create a racial polarization in voting.

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[96] H.R. Rep. 94-196 at 19-20.

[97] Discussed in the 1975 Senate Hearings at 915.

[98] Discussed in the 1975 Senate Hearings at 919.

The discriminatory use of a majority runoff requirement and place system in the context of at-large elections was also invalidated in *Weaver v. Muckleroy*, Civ. Ac. No. 5524 (E.D. Tex. Jan. 27, 1975).[99] The case arose in the city of Nacogodoches, which has a 15% black population. The court's opinion reveals that no black had ever won a county-wide or city election. The city charter provided for a five-member commission form of government, and had not been amended since 1929. Since that time city elections had been held at-large, with the office awarded to candidates securing a plurality of the votes.

In the spring of 1972, a black ran for the City Commission. He came close to winning a plurality in an election which registered the highest turnout in the history of Nacogodoches city elections. In June, 1972, the all-white City Commission proposed the first amendment to the city charter in 43 years, the institution of a majority runoff, numbered place system. The proposal was adopted by Nacogodoches voters.

In April 1973 another black ran for City Commissioner. He won a plurality of the votes in the first election, but lost the runoff. At the same time, the City Commissioners changed the date of election from April to mid-July in order to avoid the impact of the votes of students at a predominantly black college in the area. On the basis of these facts, the district court held that the at-large, majority runoff, numbered place system tended to abridge the voting rights of black citizens, and ordered the institution of single-member districts. *See also Graves v. Barnes* II, *supra*, 378 F. Supp. at 659.

The hearing record contains additional testimony regarding the discriminatory purpose and effect of at-large,

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[99] Discussed in the 1975 House Hearings at 400-401; reprinted in 1975 Senate Hearings at 252-54.

majority runoff, place system elections. One witness testified that, as a consequence of the widespread use of at-large elections, "you will find little or no representation in the so-called impact area, the heavily concentrated Mexican American, black and minority areas." [100] A study included in the record concluded that fear of bloc voting by minority voters caused several Texas communities to adopt the place system:

> A member of one city charter commission admits that the place system was written into the charter "to prevent minority groups from voting against all candidates but one in order to ensure their man got the most votes." An individual who helped to draft another charter candidly acknowledged that the place system was selected so that the Negro minority in his city would be unable to elect a councilman.[101]

Congress was informed that the preclearance provisions of Section 5 would protect minority voters from the discriminatory use of at-large, majority runoff, and numbered place rules.[102] This prediction has proven true. To date, the Attorney General has issued numerous letters of objection barring implementation of such devices. Submissions objected to were filed by independent school districts, municipalities, and Commissioners Courts. The Attorney General's objection to the designation of a place system and the adoption of a majority vote requirement by the Hereford Independent School District is illustrative. The letter of objection notes:

> With respect to the designation of election by place and the majority vote requirement . . . [w]e have noted particularly the growing minority population

[100] 1975 House Hearings at 483.

[101] 1975 Senate Hearings at 988.

[102] 1975 Senate Hearings at 489.

> of the district, the electoral history of the district, the increase in minority political activity, the lack of any minority representation on the Board of Trustees of the district, and the fact that these features would be added to an at-large election system.
>
> . . . The opportunity for minority voters to elect a representative of their choice to the school board is significantly lessened by the addition of the numbered place requirement. . . . The majority vote requirement exacerbates this problem, by preventing a minority candidate who receives a plurality against two or more majority candidates from being elected without facing a run-off election against a single majority candidate.[103]

4. Annexations and de-annexations

Annexations and de-annexations of areas with large white voting populations are also used in Texas to reduce minority participation in the electoral process. For example, in 1972, the Pearsall City Council annexed a 100% white development but refused to annex compact, contiguous areas of high Mexican American concentration, and San Antonio, where the City Council is elected at-large, made massive annexations including irregular or finger annexations on the city's heavily white north side.[104] The Attorney General subsequently objected to the San Antonio annexation on the ground that the proportional strength of the Mexican American population necessarily has been reduced. . . ."[105]

[103] Letter of objection dated May 24, 1976.

[104] 1975 House Hearings at 368. *See City of Petersburg, Virginia v. United States*, 354 F. Supp. 1021 (D.D.C. 1972), *aff'd*, 410 U.S. 962 (1973), where the court affirmed a finding that an annexation of predominently white areas diluted the votes of black citizens.

[105] Letter of objection dated April 2, 1976. This letter of objection was withdrawn after San Antonio voters approved a plan for the election of the City Council from single-member districts.

The Attorney General also objected to a proposal to establish the Westheimer Independent School District in an area which had been part of the Houston Independent School District (HISD). The letter of objection states that the Justice Department had received comments from interested persons alleging that the proposal had a discriminatory purpose, and that:

> . . . Such comments point out that the Westheimer district was first proposed shortly after . . . minority-backed candidates first gained control of the board and shortly after the HISD had been ordered to undertake substantial school desegregation. The materials which accompany your submission do not refute such allegations. In addition, it appears that minority residents in the proposed Westheimer district have no realistic opportunity to achieve the sort of representation in the proposed Westheimer Independent School District that they now enjoy in the Houston Independent School District.[106]

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[106] Letter of objection dated January 13, 1977. On January 15, 1977, the Westheimer Independent School District held special elections to select school trustees pursuant to the reapportionment and new electoral procedures to which the Attorney General had objected. The certified winners assumed official responsibilities the following day. On January 20, 1977 the Attorney General filed an action in the United States District Court for the Southern District of Texas, *United States v. Interim Board of Trustees of the Westheimer Independent School District, et al.*, (Civ. Ac. No. H-77-121), seeking to set aside the election and enjoin defendants from taking any action purported to be official action of the Westheimer Independent School District by virtue of their election pursuant to the objectionable procedures.

The hearing record, together with events subsequent to the passage of the Voting Rights Act Amendments of 1975, thus establishes a systematic and pervasive pattern of voting discrimination against Mexican Americans and blacks in Texas. The pattern revealed is strikingly similar to that which existed in the South and led to the enactment of the Voting Rights Act of 1965.[107] The record also establishes that case-by-case litigation has not and cannot end voting discrimination in Texas.[108] Preparation of voting rights cases is extraordinarily costly and time consuming, and neither the Justice Department nor private parties have the resources to remedy all discriminatory voting practices. More important, political jurisdictions in Texas, intent on perpetuating the political subordination of minorities, persistently violate court orders or evade them by adopting new modes of discrimination not covered by the letter of the decree.[109]

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[107] *Cf. Ten Years After.*

[108] H.R. Rep. 94-196 at 26-27; 1975 House Hearings at 499; 1975 Senate Hearings at 767-68. Case-by-case litigation was equally ineffective in the South. From 1957 until 1965, the Justice Department filed 71 actions under the 1957, 1960 and 1964 Civil Rights Acts. These actions included challenges to discriminatory registration practices, private and official intimidation, and omnibus actions against the discriminatory application of voter qualification tests. Despite such efforts, the percentage registration of blacks and the percentage of black elected officials in the South increased by only nominal amounts, if at all. Derfner, *Racial Discrimination and The Right to Vote*, 26 Vand. L. Rev. 523, 548-49 (1973).

[109] This was also characteristic of the southern states now covered by the Voting Rights Act. In *South Carolina v. Katzenbach*, *supra*, 383 U.S. at 314, 335, this Court stated:

> Litigation has been exceedingly slow, in part because of the ample opportunities for delay afforded voting officials and others involved in the proceedings. Even when favorable decisions have finally been obtained, some of the states affected have merely switched to discriminatory devices not

[footnote continued]

It was for similar reasons that Congress enacted the Voting Rights Act of 1965. That Act proved effective,[110] and evidence of widespread voting discrimination against Mexican Americans led Congress in 1975 to extend its protections to language minorities in Texas and elsewhere.[111] The preclearance provisions of Section 5 already have operated to prevent the implementation of many discriminatory changes in Texas voting pro-

covered by federal decrees or have enacted difficult new tests designed to prolong the existing disparity between white and Negro registration. . . . Congress knew that some of the States covered by Section 4(b) of the Act had resorted to the extraordinary stratagem of contriving new rules of various kinds for the sole purpose of perpetuating voting discrimination in the face of adverse federal court decrees.

It is also noteworthy that the bulk of Section 5 objections entered against southern jurisdictions have involved the same types of discriminatory devices, for example, at-large elections and multi-member districting, that the Attorney General most often has objected to when employed in Texas. *See* H.R. Rep. 94-196 at 9-10; 1975 House Hearings at 183-85, 629.

[110] *See* discussion, *supra*, at 3-4. While the significant increase in black registration and turnout in the South is attributable in part to the presence of federal examiners and observers, the preclearance provisions of Section 5 have had the most significant impact on voting discrimination. Section 5 avoids the cost, delay and randomness of the case-by-case approach. Shifting the burden of proof to covered jurisdictions has prevented the enforcement of subtle discriminatory devices such as gerrymandering, multi-member districting, and the numbered place system which tend to dilute the value of the vote. Moreover, covered jurisdictions are discouraged from contriving new modes of discrimination for the purpose of evading the effect of judicial decrees. 1975 House Hearings at 331-32, 640-41.

[111] H.R. Rep. 94-196 at 16-27.

cedures.[112] As Congress found, it is only through continued enforcement of the Voting Rights Act that Mexican Americans as well as blacks in Texas will enjoy their full range of political and civil rights.[113]

IV.

EXTENSION OF THE VOTING RIGHTS ACT OF 1965 TO TEXAS WILL FACILITATE THE ELIMINATION OF OTHER FORMS OF ECONOMIC AND SOCIAL DISCRIMINATION.

Protection of the constitutional right to vote is the primary objective of the Voting Rights Act of 1965 and

[112] As of January 1, 1977, approximately 36 letters of objection had been interposed in response to submissions from Texas. Significantly, most of these objections involve malapportionment, gerrymandering, at-large elections, majority runoff requirements, place system, and other forms of "sophisticated" discriminatory devices which are difficult and time consuming to challenge through litigation. The Committee on Elections of the Texas House of Representatives reported in "Interim Report: The Voting Rights Act in Texas" [hereinafter "Interim Report"] that during the first twelve months of Voting Rights Act coverage the Attorney General had objected to approximately 3% of Texas' Section 5 submissions. Interim Report at 171. This compares to an objection rate over a 10-year period of approximately 1.1% for Virginia and 2% for South Carolina. *See* 1973 Senate Hearings at 596-600. The Committee Report also notes that the number of objections (25) "has pushed Texas into fourth place among all the states covered by Section 5 of the Voting Rights Act. This figure includes the deep southern states now entering their twelfth year of coverage, as only Georgia and Louisiana (who have an estimated 37 objections each) and Mississippi (with 29) are running ahead of Texas in the number of VRA objections." Interim Report at 172. The Committee states that more objections had been interposed in a single year in Texas than in any of the southern states subject to the Act. *Id.* at 172-73. The Report further notes that many Texas governmental bodies "have felt obliged to risk a court attack on their changes and, perhaps, even the overturning of their elections by going ahead and using changes before receiving a no objection ruling from the Justice Department." *Id.* at 177.

[113] *See* H.R. Rep. 94-196 at 21-22, 26-27; 1975 House Hearings at 492.

the 1975 Amendments. However, the Voting Rights Act has a critical secondary objective. As this Court held in *Reynolds v. Sims*, 377 U.S. 533, 562 (1964), the right "to exercise the franchise in a free and unimpaired manner is preservative of other basic civil and political rights." Minorities able to participate fully in the electoral process are in a better position to deal effectively with other forms of economic and social discrimination.

This secondary objective of the Voting Rights Act has particular importance in Texas where Mexican Americans and blacks have long been subject to a variety of discriminatory practices.[114] In *Graves v. Barnes* I, *supra*, the three-judge district court found:

> Because of long-standing educational, social, legal, economic, political and widespread prevalent restrictions, customs, traditions, biases and prejudices, some of a so-called *de jure* and some of a so-called *de facto*, the Mexican American population of Texas, which amounts to about 20%, has historically suffered from, and continues to suffer from, the results and effects of invidious discrimination and treatment in the field of education, employment, economics, health, politics and others. [343 F.Supp. at 728].

Pervasive discrimination in education is illustrated by the fact that most major metropolitan school districts in the state have been ordered by federal courts to eliminate

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[114] *See* 1975 House Hearings at 175-78, 277-79 for testimony that the Justice Department has had to bring lawsuits against state and local governments to protect Mexican Americans in Texas against discrimination in education, employment, housing and law enforcement. The legislative record also includes a memorandum from a member of the Texas House of Representatives which cites examples of the state legislature's failure to fund programs intended to benefit Mexican Americans and blacks. 1975 Senate Hearings at 920-21.

unconstitutional dual school systems.[115] Three of the six school districts now facing the loss of federal funds because of Title VI violations are in Texas.[116] Two-thirds of all Mexican American students in Texas attend predominantly Mexican American schools; 40% attend schools that are nearly all Mexican American.[117] Moreover, the amount of money spent in Texas to educate most Mexican American students is approximately 60% of that spent to educate whites.[118] The illiteracy rate for persons of Spanish origin in Texas is 33.8% compared to 8.6% for whites,[119] and 35.6% of Texas Mexican American families have incomes below the poverty level.[120]

Residential segregation is also widespread. In many towns and cities Mexican Americans "are not permitted to own property anywhere except in the Mexican 'colony,' regardless of their social, educational or economic

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[115] *See generally, Project Report: De jure Segregation of Chicanos in Texas Schools*, 7 Harv. Civil Rights-Civil Liberties L. Rev. 307 (1972). *See also Cisneros v. Corpus Christi Independent School District, supra*, n. 28.

[116] *N.Y. Times*, January 18, 1977 at A16.

[117] U.S. Commission on Civil Rights, "Ethnic Isolation of Mexican Americans in Public Schools of the Southwest," Report I at 60 (1970).

[118] United States Commission on Civil Rights, "Mexican American Education in Texas: A Function of Wealth," Report IV at 26 (1972).

[119] June 1975 CRC Memorandum at 4. Comparable figures for blacks in the South range from 18.4% in Virginia to 28.4% in Mississippi. 1975 House Hearings at 364, 369. The illiteracy rate for persons of Spanish origin in Texas is 14.4% higher than in any of the other Southwestern states. June 1975 CRC Memorandum at 4.

[120] 1975 Senate Hearings at 766. Approximately 40% of the blacks in Texas are living below the poverty level. 1975 House Hearings at 802.

status."[121] The housing that is available to Mexican Americans is generally inadequate. A 1966 study reported that 46.5% of the Mexican American families in Texas occupied overcrowded housing compared to 25.9% of the non-white and 9.4% of the white families.[122]

Mexican Americans have also suffered severe employment discrimination. During the 1940's, the majority of Texas industries discriminated against Mexican American workers with regard to employment, wage scales, and opportunities for promotion.[123] In 1959, Spanish surnamed males in the Southwest earned 57 cents for every dollar earned by whites.[124] Even today Mexican Americans are limited in employment and promotional opportunities by tests, seniority systems and other devices which perpetuate the results of past discrimination.[125]

Discrimination against Mexican Americans in the administration of justice is also well documented.[126] The Civil Rights Commission has reported severe police discrimination against Mexican Americans, and found that

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[121] P. Kibbe, *Latin Americans in Texas*, 123-24 (1946) (hereinafter Kibbe). *See also* J. Moore and F. Mittelbach, *Residential Segregation in the Urban Southwest* (Advance Report IV, Mexican American Study Project, UCLA Advance Report IV at 32, 38 (1966).

[122] F. Mittelbach and G. Marshall, *The Burden of Poverty*, Mexican American Study Project, UCLA Advance Report V at 44 (1966).

[123] Kibbe at 157.

[124] J. Moore, *Mexican Americans*, 60 (1970).

[125] *See, e.g., Sabala v. Western Gillette, Inc.*, 362 F.Supp. 1142 (S.D. Tex. 1973), *aff'd in relevant part*, 516 F.2d 1251 (5th Cir. 1975). *See also* Greenfield and Kates, *Mexican Americans, Racial Discrimination, and the Civil Rights Act of 1866*, 63 Calif. L. Rev. 662, 718-23 (1975).

[126] *See generally* United States Commission on Civil Rights, Mexican Americans and the Administration of Justice in the Southwest (1970).

in Nueces County, Texas, where Mexican Americans comprise over 40 percent of the population, of 288 grand jurors selected over a nine-year period only 16 were Mexican Americans.[127]

The elimination of economic, social, and other forms of discrimination in Texas depends, to a significant extent, on the elimination of discrimination against Mexican American and black voters. In *Katzenbach v. Morgan*, 384 U.S. 641, 652-53 (1966), this Court recognized that the Voting Rights Act helps minority citizens gain "nondiscriminatory treatment in public services," and thereby enables them "better to obtain 'perfect equality of civil rights and the equal protection of the law.'" Likewise, in *Robinson v. Commissioners Court, supra*, the Fifth Circuit affirmed the district court's findings that segregation of the county's public schools and other facilities, discrimination in county employment, and the Commissioners Court's general "unresponsiveness to the needs and interests of the black community" was a direct result of "oppressive and restrictive voting legislation and racial discrimination generally in the state of Texas." 505 F.2d at 679.[128] Once able to participate in the electoral process in a free and unimpaired manner, Mexican Americans and blacks in Texas will be in a position to insist that elected offi-

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[127] H. Rohan, *The Mexican American* 20 (1968) (Staff paper prepared for the United States Commission on Civil Rights). *See also* Kibbe, at 229. In *Hernandez v. Texas*, 347 U.S. 475 (1954), it was held that discrimination against Mexican Americans in the selection of grand jury panels violates the Fourteenth Amendment.

[128] *See also Cisneros v. Corpus Christi Independent School District, supra*, 324 F.Supp. at 604-05 n.27.

cials desegregate public school systems, enforce laws prohibiting discrimination in employment and housing, and take whatever action is necessary to eliminate discrimination by law enforcement and other public agencies.

CONCLUSION

For the foregoing reasons, and for the reasons set forth in the brief for respondents, the decision below should be affirmed.

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